

Exhibit 38

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In Re: Case No:

RESIDENTIAL CAPITAL, LLC, et. al., 12-12020 (MG)

Debtors.

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VIDEOTAPE DEPOSITION OF TIMOTHY DEVINE

New York, New York

November 19, 2012

10:17 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27973

1 TIMOTHY DEVINE

2 Q. I'm not asking you to speculate.

3 I'm asking you to tell me at the time that
4 you were preparing to provide this
5 waterfall presentation to Ms. Patrick in
6 connection with proposed settlement with
7 her, wasn't it your understanding that AFI
8 in return for whatever contribution it
9 would be making to that settlement was
10 going to require releases from both the
11 PLS claimants as well as ResCap?

12 A. Couple -- couple points in
13 response. One, I wasn't preparing the
14 waterfall.

15 Two, we were not negotiating,
16 Kathy Patrick and me -- Kathy Patrick and
17 I with regard to whether or not the 750
18 would be consideration for anything that
19 the debtor received in connection with the
20 resolution of a debtor and Kathy Patrick
21 settlement agreement.

22 Q. Weren't those things all being
23 negotiated together, Mr. Devine?

24 A. The 750 was not being negotiated
25 with Kathy Patrick.

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2 A. Okay. So as I recall sitting
3 here today, the estimated nonwrapped
4 potential exposure beyond 2013 represented
5 estimated lifetime losses, which I'm
6 testing with the note here, multiplied by
7 risks post fund audit defect rates
8 adjusted for litigation defenses. Risk
9 referred to Todd Kushman's group. And so
10 that would have been -- what I don't
11 remember is nonwrapped potential exposure
12 beyond 2013, whether that would have
13 included anything beyond private label
14 securities nonwrapped potential exposure.
15 I just don't remember.

16 Q. The next line under Additional
17 Items says "Adj. for application of defect
18 rate at a nonloan level for nonwrapped PLS
19 and additional provision for wrapped PLS."

20 Do you see that?

21 A. I see it, yeah.

22 Q. And that shows an adjustment of
23 \$500 million upwards for nonwrapped and
24 wrapped PLS exposure, right?

25 A. Well, it represents application

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2 of a defect rate of a nonloan level for
3 those populations.

4 Q. Okay. And the next line under
5 Additional Items says "Potential
6 investor/securities litigation." Do you
7 see that?

8 A. Yes, I see it.

9 Q. Is the amount shown for that
10 item \$400 million, the estimate of
11 exposure for securities fraud claims at
12 that point?

13 A. No.

14 Q. Okay. What does it represent?

15 A. As I sit here today, my memory
16 is that it represents the estimated top
17 end of the range of reasonably possible
18 losses for ResCap over time related to
19 litigation and -- repurchase obligation of
20 related claims. Meaning, as I understand,
21 that would have been subject to certain
22 stresses beyond what the estimated
23 exposure would have been.

24 Q. Mr. Devine, I was only focusing
25 on the line that says "Potential

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2 Q. And is the e-mail above that
3 your response to Mr. Lee?

4 A. Yes. That's what it looks like.

5 Q. Mr. Lee referred to a call or
6 meeting with Ms. Patrick that day. And
7 you said our notes match. Were you and
8 Mr. Lee both on a call with Mr. Patrick --
9 sorry -- with Ms. Patrick on May 4th?

10 A. I -- I don't remember. What --
11 what I do remember is that Gary Lee was
12 having a variety of conversations with
13 Kathy Patrick during that period, some of
14 which I would have been included on and
15 some of which I wouldn't have been
16 included on.

17 Q. Well, he was summarizing in an
18 e-mail what Ms. Patrick had proposed that
19 day. And you said, "Our notes match." So
20 you must have been on that call, right?

21 MR. PRINCI: Objection as to
22 form.

23 A. Yeah, might. The reason I
24 clarified my answer is that it could be
25 that he was summarizing calls or meetings

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2 Q. Yes.

3 A. No, she did not indicate that to
4 me.

5 Q. Did she indicate that it was
6 important?

7 A. Yes.

8 Q. Okay. What did she say about
9 that?

10 A. Kathy Patrick understood that
11 the negotiation of a dollar number between
12 AFI and ResCap was going on separately
13 from the discussions over the RMBS
14 settlement. Notwithstanding that, she
15 understood that she had no direct role
16 or -- or standing to bargain for a number
17 there since the number -- since that
18 agreement was between the estate and Ally.
19 She did care about the number and she told
20 me that she cared about the number for the
21 obvious reason that she wanted to maximize
22 that figure from Ally Financial.

23 Q. But as of May 4th, had she
24 expressed an amount that she expected from
25 AFI if she were going to proceed with a

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2 stalking horse for the -- for a certain
3 class of assets that were being offered
4 for sale in the estate. But -- but I
5 confess, I didn't know what it was then
6 and frankly I don't know what it is now.

7 Q. What did you mean by 100 for
8 originations?

9 A. Similar answer. I understood
10 that the teams working on the Ally and
11 ResCap settlement had come up with this
12 sort of shorthand to represent what I was
13 made to understand was the Ally cash
14 contribution to the Ally and ResCap
15 settlement, which is the settlement to
16 which this sentence here refers. "Assume
17 750 Ally cash plus 200 for HFS plus 100
18 for origination constitute the Ally" cash
19 contribution to the settlement. That's
20 the Ally ResCap settlement that's being
21 described. And as I said before, I really
22 did not participate in or have any
23 responsibility in working on that, those
24 settlement discussions.

25 Q. Who was it that gave you those

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2 A. In connection with the
3 resolution with Kathy Patrick, no.

4 Q. Were you -- okay. So what you
5 just said is incorrect, right? It had
6 nothing to do with your advising the
7 client on that number. I'm asking you
8 whether you were comfortable as Ally's
9 lawyer with an \$8.7 billion number based
10 on the information Mr. Cancelliere gave to
11 you in his May 9th e-mail?

12 MR. PRINCI: Objection as to
13 form.

14 MR. BRYAN: Objection as to
15 form.

16 A. That's how I understood your
17 question.

18 Q. Right, okay. So that was the
19 client, AFI?

20 A. Correct.

21 Q. Okay. Do you recall one way or
22 another whether an \$8.7 billion allowed
23 claim had been agreed to as of May 9th,
24 2012, at 7:17 a.m.?

25 A. Do I recall that right now

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2 Q. Okay. Did there come a time
3 when you learned who it was, what
4 individuals were negotiating a settlement
5 between ResCap and AFI?

6 A. Yes.

7 Q. Okay. When did you learn that?

8 A. I don't remember when I learned
9 that.

10 Q. Did you learn it before or after
11 the ResCap board gave its approval to the
12 settlement with Kathy Patrick?

13 A. I don't know.

14 Q. Okay. What individuals did you
15 come to learn negotiated the settlement
16 between AFI and ResCap?

17 A. Well, I may or may not be
18 correct but you are asking me for my
19 understanding. It was Mike Carpenter for
20 AFI with the independents of the ResCap
21 board.

22 Q. During the course of the
23 negotiations with Ms. Patrick, up until
24 May 9th, weren't you -- weren't you being
25 kept advised about the progress of

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2 conversations were moving on from sort of
3 rep and warrant general conversations to
4 agreements that would take meaning within
5 the concept of a bankruptcy, I was
6 indicating that I am not bankruptcy expert
7 and would not be the right person to
8 negotiate terms of an agreement in that
9 context.

10 I would have thought that given
11 the population of the recipients of this
12 e-mail I sent, that Gary Lee would have
13 picked up the conversation with Talcott
14 Franklin. And it looks like at the top of
15 this Exhibit 148 that that's exactly what
16 happened. That Gary Lee responded and
17 said we can send him a revised agreement
18 and PSA when we get next draft from KP.

19 MR. KAUFMAN: Let's mark as
20 Exhibit 149 an e-mail chain on
21 May 9th, 2012. Bates numbers RC
22 9019_00049216 and 9217.

23 (9019 Exhibit 149, e-mail chain
24 on May 9th, 2012, Bates RC
25 9019_00049216 and 9217, marked for

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2 identification, as of this date.)

3 A. Thank you.

4 Q. Directing your attention to the
5 first e-mail in the chain, which appears
6 at the bottom of the first page and goes
7 over to the top of the second page. Did
8 you receive that e-mail from Mr. Schrock?

9 A. It looks like I did.

10 Q. Mr. Schrock wrote in this
11 e-mail, "And, Gary, as you know, the pure
12 cash number in the settlement agreement as
13 plan sponsor is \$750 million. I do not
14 want this lost in translation among the
15 group, please."

16 Do you see that?

17 A. Yes, I do.

18 Q. Do you know why Mr. Schrock
19 wanted to make that clear to Mr. Lee?

20 MR. BRYAN: Object to form.

21 MR. PRINCI: Objection as to
22 form.

23 A. No, I don't know why he wanted
24 to make it clear.

25 Q. Did you receive Mr. Lee's

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2 response at 10:01 a.m. on May 9th?

3 A. It looks like I did.

4 Q. There Mr. Lee ~~said~~ "That's what
5 I gather. Also we are allocating 10
6 percent to LLC only." Do you see that?

7 A. I do see that.

8 Q. Did you understand Mr. Lee's
9 reference to LLC was to Residential
10 Capital, LLC?

11 A. I don't recall whether I
12 understood that to mean that.

13 Q. As you sit here today, do you
14 understand it now?

15 A. I should tell you that I did not
16 consider myself responsible for any

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2 REDACTED

3 Q. Right. Nevertheless, four
4 minutes later you responded to Mr. Lee
5 with an e-mail that said "And the setoff
6 curve ball must be waived, no value."

7 Right?

8 A. That's what it looks like.

9 Q. Are you saying that you were
10 able to send that e-mail without
11 understanding what Mr. Lee was talking
12 about in the e-mail to which you
13 responded?

14 MR. PRINCI: Objection to form.

15 MR. BRYAN: Objection as to
16 form.

17 A. What I will tell you is that it
18 was made known to me at some point, and if
19 these numbers -- if these times are
20 correct, at some point on either Tuesday,
21 May 8th, Wednesday, May 9th, that there
22 was some sort of a setoff argument being
23 advanced by, I assume it was by either
24 Kathy Patrick or Talcott Franklin or one
25 of the counterparties and as I sit here

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2 A. Well, I sent an e-mail to Gary
3 Lee, Jamie Levitt, Noah Ornstein and John
4 Ruckdaschel, cc'd Cieri and Schrock at
5 4:29.

6 Q. Right. And you sent that e-mail
7 in response to Mr. Lee's e-mail at 4:26 on
8 May 12th, didn't you?

9 A. Yeah, I'm not sure if it's in
10 response but I did send him an e-mail a
11 couple minutes later.

12 Q. And you wrote, "Got it. Had
13 call with KP. We told her PSA support
14 whole hog is drop dead." That's what you
15 wrote, right?

16 A. That's what I wrote.

17 Q. And is that what you told
18 Ms. Patrick?

19 A. I don't remember if I told her
20 whole hog but if I read this sitting here
21 now, it looks like I was communicating to
22 that group that I told her that she had to
23 support the PSAs in full. And that that
24 was a provision that Ally would insist on
25 to the extent Ally could insist on

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2 anything.

3 Q. And by using the phrase "drop
4 dead" you meant it was nonnegotiable from
5 Ally's perspective, right?

6 A. I meant that if she wanted our
7 participation in the PSA she needed to
8 support it.

9 MR. KAUFMAN: Let's mark as the
10 next exhibit an e-mail chain on
11 May 13, 2012 between Mr. Devine and
12 Talcott Franklin.

13 (9019 Exhibit 155, e-mail chain
14 dated May 13, 2012 between Mr. Devine
15 and Talcott Franklin, marked for
16 identification, as of this date.)

17 A. Okay.

18 Q. Looking at the first e-mail in
19 this chain which starts at the bottom of
20 the first page, did you send that e-mail
21 to Mr. Franklin at 12:16 p.m. on
22 May 13th -- I'm sorry -- at 1:28 p.m. on
23 May 12th?

24 A. It looks like I did. Again, I'm
25 not sure of the timing but it looks like I

1 TIMOTHY DEVINE
2 represent clients who did or did not under
3 the relevant documents have contract
4 claims against ResCap. And that was
5 natural because I had been dealing with
6 that kind of assertion of claim, although
7 not by investors and trustees but rather
8 by the monolines against the ResCap
9 entities theretofore.

10 At some point ResCap began to
11 consider a Chapter 11 restructuring. I
12 did not represent ResCap at all in
13 connection with this Chapter 11
14 restructuring, unless you consider the
15 nature of our discussions according to the
16 common interest or joint defense privilege
17 in which case that's why I don't blame you
18 for misunderstanding the nature of what I
19 just talked about. But so, yes, I did
20 represent ResCap in connection with the
21 sort of bilateral claim of Kathy Patrick's
22 clients against the ResCap entities and
23 rep and warrant. Once the context of the
24 restructuring became a part of that
25 dialogue, ResCap was represented by Gary

1 TIMOTHY DEVINE
2 Lee of MoFo. I never represented ResCap
3 on a bankruptcy related resolution. At
4 least unless you -- as I say, I did
5 continue to advise ResCap in connection
6 with plain sort of legal analysis on rep
7 and warrant issues but not so much as
8 would be implicated in connection with the
9 filing.

10 Q. Thank you for that and let me
11 try to make sure I understand correctly.
12 To try to summarize. In the beginning of
13 from October for some period of time in
14 the initial stages that you've described
15 as essentially information gathering
16 stages, you were representing ResCap. By
17 the end, by the April and May time period
18 that we have looked at a variety of
19 e-mails by that time period you were no
20 longer representing ResCap, you would have
21 solely been representing AFI, is that
22 correct, am I bracketing the change in
23 role correctly?

24 A. No. I think you are missing one
25 part of it. But it's -- it's